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 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

12 BHUPINDER KAUR KHARANA,) No. C 07-4754 TEH
 13 Petitioner,)
 14 v.) GOVERNMENT'S RETURN
 15 MICHAEL CHERTOFF, et al.,)
 16 Respondents.)
 17 _____)

18 **I. INTRODUCTION**

19 Petitioner Bhupinder Kaur Kharana (“Petitioner”) petitions the Court to remedy her alleged
 20 unlawful detention. She admits that the Ninth Circuit Court of Appeals has denied her petition for
 21 review, but nonetheless argues that her removal should have been stayed because she is currently
 22 challenging her conviction in state court. Petitioner’s claims fail because the Court lacks jurisdiction
 23 to consider what is blatantly a challenge to her order of removal. In addition, immigration courts
 24 cannot review the merits of underlying convictions. Accordingly, even if the Court has subject
 25 matter jurisdiction, the Court should decline to relitigate the merits of Plaintiff’s convictions.

26 **II. BACKGROUND**

27 In 2001, Petitioner pled no contest to obtaining money by false pretenses, in violation of
 28 California Penal Code § 532, and destroying property of a value in excess of \$50,000. Exh. A. As

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1 a result of that conviction, she came to the attention of Immigration and Customs Enforcement
 2 (“ICE”). Exh. B. Upon her release from state prison in 2003, ICE took custody of her and initiated
 3 removal proceedings. Exh. C. ICE alleged that Petitioner was subject to removal pursuant to 8
 4 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony. *Id.*

5 On March 21, 2003, ICE informed Petitioner of its decision to deny her petition for
 6 naturalization based on her false testimony and lack of good moral character. Exh. D. Petitioner
 7 apparently did not pursue an administrative appeal of that decision. On September 3, 2003, ICE
 8 determined that Petitioner should be held in custody for the pendency of the removal proceedings.
 9 Exh. E. The Board of Immigration Appeals (“BIA”) affirmed the immigration judge’s subsequent
 10 decision that she was removable as charged. Exh. F. On May 29, 2007, the Ninth Circuit Court of
 11 Appeals affirmed the BIA. *Kharana v. Gonzales*, 487 F.3d 1280 (9th Cir. 2007). Petitioner was
 12 removed from the United States on September 14, 2007.

13 III. ANALYSIS

14 A. THE COURT’S REVIEW IS CONFINED TO PURE ISSUES OF DETENTION

15 On May 11, 2005, the President signed into law the “Emergency Supplemental
 16 Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005,” Pub. L. No.
 17 109-13, 119 Stat. 231. Division B of the Act consists of the “REAL ID Act.” Section 106 of the
 18 REAL ID Act amends a portion of 8 U.S.C. § 1252, and clarifies the scope of judicial review of
 19 removal orders. Pursuant to section 106, a petition for review to the court of appeals is the exclusive
 20 means of review of an administrative order of removal, deportation, or exclusion. REAL ID Act
 21 § 106(a).

22 The REAL ID Act allows habeas review only over challenges to detention that are
 23 independent of challenges to removal. See H.R. Rep. No. 109-72 (2005), reprinted in 2005
 24 U.S.C.C.A.N. 240, 300 (stating “section 106 would not preclude habeas review over challenges to
 25 detention that are independent of challenges to removal orders. Instead, the bill would eliminate
 26 habeas review only over challenges to removal orders.”) (emphasis added). Here, Petitioner has
 27 been found removable as an alien convicted of an aggravated felony. See Exh. A; *Kharana*, 487 F.3d
 28 at 1284. To the extent she challenges her removal based on that conviction, her claims are barred

1 because a decision in her favor would effectively be a ruling on Petitioner's removability. Under
 2 the REAL ID Act, such decisions are beyond the bounds of the Court's jurisdiction. REAL ID Act
 3 § 106.

4 Petitioner couches her claim as a challenge to the validity of her conviction on the basis of
 5 ineffective assistance of counsel. Petition, p. 3. The Ninth Circuit recently held that an alien may
 6 raise an ineffective assistance of counsel claim in the context of a habeas petition where the alleged
 7 ineffective assistance occurs after the issuance of a final order of removal, and will "lead to nothing
 8 more than 'a day in court'" for the petitioner. Singh v. Gonzales, – F.3d –, 2007 WL 2406862, at
 9 *7 (9th Cir. Aug. 24, 2007). Here, Petitioner alleges that in 2001, long before the issuance of a final
 10 order of removal, her criminal attorney provided her with ineffective assistance. Moreover, the
 11 Ninth Circuit's holding applies only to ineffective assistance on counsel in the immigration
 12 proceeding, and not, as Petitioner alleges, to ineffective assistance of counsel in other forums. Id.
 13 Accordingly, her claim does not fall into this narrow exception to the REAL ID Act, and the Court
 14 lacks jurisdiction to consider her challenge to removal.

15 B. PETITIONER WAS LAWFULLY REMOVED

16 Even if the Court has subject matter jurisdiction, Petitioner's claim fails. First, the Ninth
 17 Circuit's decision precludes Petitioner from relitigating whether she is removable as an aggravated
 18 felon. Nunes v. Ashcroft, 375 F.3d 805, 809 (9th Cir. 2004). Accordingly, any subsequent decision
 19 by the Supreme Court of California is irrelevant. Moreover, it has long been established that
 20 immigration courts are bound by the record of conviction, and that they may not retry the criminal
 21 offenses underlying the charges of removal. Matter of Garcia, 11 I&N Dec. 521 (BIA 1966); Matter
 22 of S-R-, 6 I&N Dec. 405 (BIA 1954). Simply put, Petitioner cannot challenge her removal by
 23 challenging the validity of the underlying conviction. See, e.g., Chavez-Perez v. Ashcroft, 386 F.3d
 24 1284, 1292-93 (9th Cir. 2004) (holding, in the context of first offender drug expungement, that DHS
 25 does not have an obligation to wait until conviction is expunged to proceed with removal). Here,
 26 as in Chavez-Perez, when Petitioner was removed, she "unquestionably had suffered a conviction
 27 on [her] record that supported [her] removal." Id. at 1293.

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IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court to deny the Petition for a Writ of Habeas Corpus.

Dated: October 22, 2007

Respectfully submitted,

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/s/
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